IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 7 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

CHANDRAKANT RATILAL

Appearance:

1. WEALTH TAX REFERENCE No. 7 of 1990
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1981-82:-

"Whether, the Tribunal is right in law and on facts in allowing the claim of the assessee relating to exemption u/s.5 (xxxii) of the W.T. Act ?"

2. On the relevant valuation date, the assessee's wealth consisted of movable assets only. In the assessment proceedings, the assessee claimed exemption u/s.5(1)(xxxii) of the Act in respect of investment amounting to Rs.1,50,000/- made in industrial concerns. The WTO, relying upon his orders in earlier years, rejected assessee's said claim. But in appeal the learned AAC, following a number of decisions of the Tribunal on the point in several similar cases, accepted assessee's claim. Revenue's second appeal to the Tribunal also failed and the view of the AAC was upheld.

3. We have heard Mr Manish R Bhatt, learned Sr. Standing Counsel for the revenue. Though served, none appears for the respondent - assessee.

4. Mr Bhatt for the revenue submitted that the Tribunal had followed its decision in the case of Dinesh Ratilal HUF holding that the expression "engaged in" employed in Explanation to clauses (xxxii), (xxxi) and (xxxa) was wide enough in import to include cases where the assessee gets the goods manufactured by an outside agency. It is, however, vehemently submitted that, that view has not been accepted by this Court. In Commissioner of Wealth-tax vs. Mohinibai Kanaiyalal (1999) 240 ITR 636, this Court has taken the view that if the work is got done by an outside agency, it cannot be said that the concerned firm was engaged in manufacture.

5. Having gone through the finding of fact given by the Tribunal that the work was being got done by an outside agency, it appears to us that the principle laid down by this Court in CWT vs. Mohinibai Kanaiyalal (supra) would squarely govern the case against the assessee. In the aforesaid decision, the Court was concerned with a case where the firm was getting grey cloth converted into cloth through outside agencies. The Court made the following observations for rejecting the assessee's claim that the firm was engaged in manufacture:-

"the finding was that the firm had got grey cloth

converted into cloth through outside agencies. It was not the case that the outside agency which was processing the grey cloth was working directly under the supervision or control of the firm, in respect of whose assets the assessee claimed exemption, nor was it the case that the processing was done by the labor employed by the firm for a purpose of its own, though not at the factory premises of the firm. Nor was it the case that the processing of the cloth by that outside agency was in any way connected with the carrying on of the business of the firm. No direct involvement of the firm with any processing act had been found to exist. In that view of the matter, the assessee could not be said to have interest in a firm which was engaged in the business of manufacture of goods or processing of goods and, therefore, she was not entitled to claim the benefit of exemption under section 5(1) (xxxii), in respect of her share in the value of its assets."

In view of the aforesaid principle laid down by this Court and the finding of fact given by the Tribunal in the instant case, we are of the view that the Tribunal was not right in allowing the claim of the assessee for exemption under section 5(xxxii) of the Wealth-tax Act, 1957.

6. We accordingly answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-